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No. 632.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

ANN B. ROSEMAN LLOYD,

Petitioner,

vs.

ROBERT W. CAMPBELL, EXECUTOR OF THE ESTATE OF CHARLES E. ROSEMAN, JR., DECEASED; MARIA CELESTE LLOYD, A MINOR, BY RALPH STICKLE, HER GUARDIAN AD LITEM; PETER JOHN LLOYD, GUARDIAN OF THE ESTATE OF MARIA CELESTE LLOYD; THE BERKSHIRE MUSIC CENTER, THE MUSICAL ARTS ASSOCIATION, AND WESTERN RESERVE UNIVERSITY,

Respondents.

PETITION FOR REHEARING.

PAUL THOMAS KEY,
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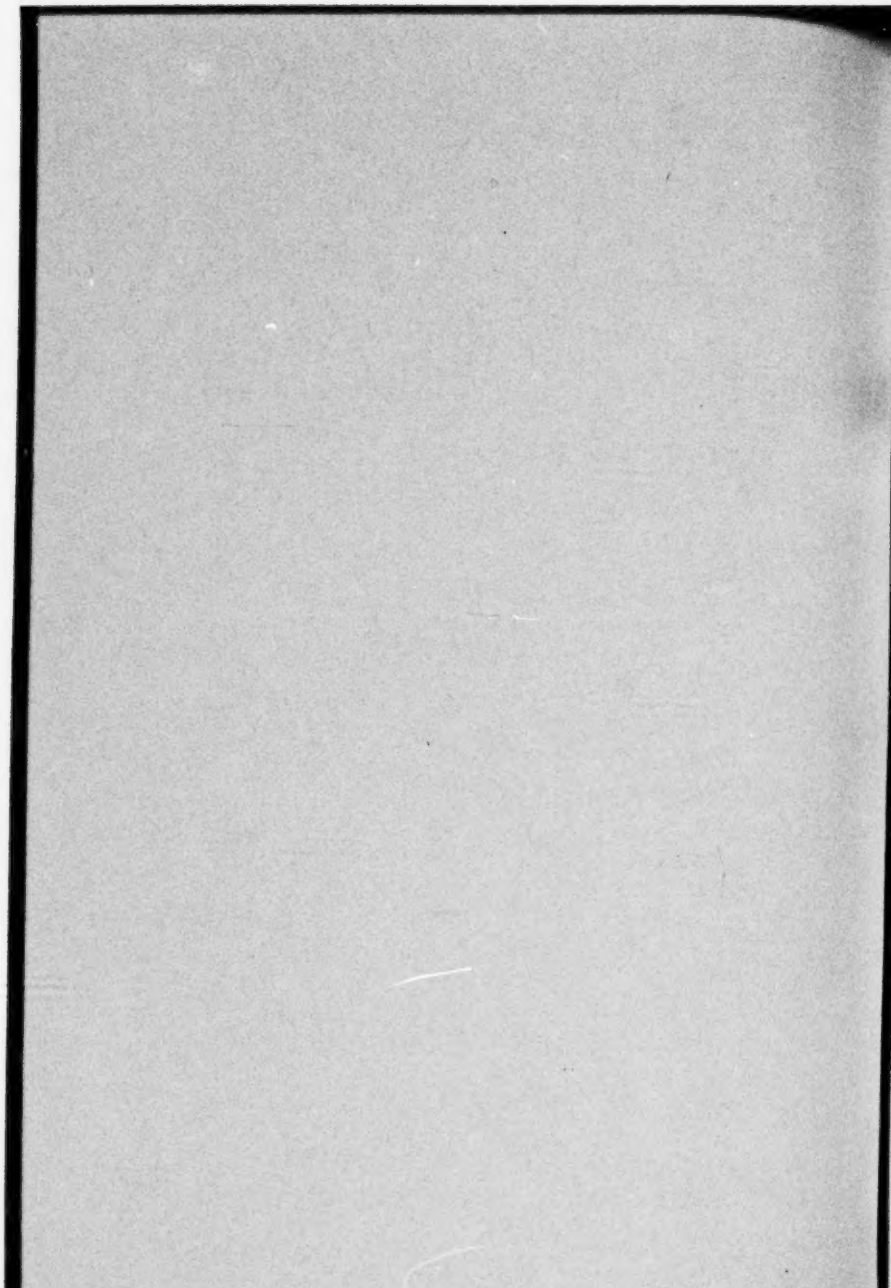

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PETITION FOR REHEARING.

To the Honorable Supreme Court of the United States:

Petitioner, Ann B. Roseman Lloyd, respectfully makes this application for rehearing of this Court's order denying her petition for a writ of certiorari for the reasons herein set forth.

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of the tax should be borne and those in which it should not.

No such requirement, either specific or implied, can be found in the United States Revenue Act of 1948. On the contrary the very purpose of the Act was to abolish a geographic inequality which had obtained due to varying state law and which resulted in different tax assessments on estates of the same size.

Prior to the enactment of the United States Revenue Act of 1948 shares of surviving spouses were taxable in common-law states but were tax free in community-property states.

The clear intent of Congress, expressed at some length in the Senate Report accompanying this statute, is that this geographic inequality shall terminate. (Senate Report No. 1013, 80th Congress, Second Session (1948).)

The Senate Report establishes beyond question that in adopting the technique of "estate splitting" and "gift splitting" and "income splitting" Congress intended to establish national uniformity in its field of federal taxation.

Such uniformity exists with respect to the federal income tax and the federal gift tax. Citizens do not pay federal income taxes based upon different rates because they live in different states. The federal tax on gifts does not vary from state to state.

The federal estate tax provisions are part of the same federal Act providing for the "splitting" between married couples of their income and gifts; yet the variations in construction of the estate tax portion of this federal taxing statute increase with each new state court decision.

Before the 1948 amendment it was possible to at least choose between a common-law or a community-property state and be assured of tax certainty based upon such

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choice. Now, even this semi-uniformity with respect to the federal estate tax is lost.

There is not now and there can never be a national uniformity in application of the federal estate tax rates until this Court assumes jurisdiction and announces a decision construing this portion of the United States Revenue Act of 1948.

We respectfully submit that the citizens of the United States are entitled, if their estates are to be taxed by their federal government at their death, to be taxed on a basis which does not depend for the applicable rate of tax upon the state in which they have the good or bad fortune to be living at the time of their death.

Had the deceased in the case at bar died, for example, in New York, Kentucky or South Carolina the federal estate tax bill would have been approximately $58,000 less than it now is—simply because he died in Ohio.

There can be nothing said in justification of the United States Treasury Department taking from one estate federal taxes in excess of what it takes from another estate of equal size, the quantum of the take being determined solely by the state of residence of the decedent.

In order to ascertain finally the intention of Congress in enacting the United States Revenue Act of 1948 and of attaining the national uniformity of interpretation which is essential to statutes relating to federal taxes it will be necessary for this Court ultimately to hear and determine the issue presented in this, and the **Hamrick** case. Should this question reach this Court only through appeal from the decision of the United States District Court in the **Hamrick** case the widow in this case and surviving spouses in many estates will be deprived of the right given them

by Congress to receive their share free of federal estate taxes.

This is a federal question of great importance. It potentially affects the rights of every surviving spouse.

For the first time since its enactment in April 1948 a federal court has construed this federal taxing statute. If that decision is correct, as we believe it to be, the rule of construction there announced should be given an authoritative standing through a decision by this Court. If it is incorrect that fact should be made known in order that the estates of decedents may be taxed uniformly.

The most recent decision of this Court relating to the burden of federal estate taxes is that of **Riggs v. Del Drago**, 317 U. S., 95.

It would appear from the tenor of some state court decisions that certain language in that decision is regarded as authority to state courts to ignore the intent of Congress in enacting the subsequent Revenue Act of 1948. In looking solely to the state law such courts are creating inequality with respect to the application of the federal estate tax provisions rather than the national uniformity which Congress expressly stated as its objective.

At the time of the decision of the **Del Drago** case, in 1924, this Court was construing the Revenue Act of 1916. The shares of all beneficiaries contributed to the tax. Congress had not yet decided to equalize the burdens of surviving spouses in common-law and community-property states. It had not determined that to accomplish this end, and create geographic tax equality, it would free from tax the shares of all surviving spouses irrespective of state residence. This Court, in that case, was not confronted with a situation where the share of a surviving spouse did not contribute to the tax, and should not, therefore, bear a portion of the tax.

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The necessity for a new, definitive decision by this Court construing the Federal Estate Tax Law as enacted in 1948 transcends the mere rights of the widow in this case, substantial though they may be.

It is respectfully urged that the Court reconsider its order herein denying the petition for a writ of certiorari, to the end that the rule of law announced by the Federal District Court in the **Hamrick** case may be examined at an early date and, if correct, approved; or if incorrect, repudiated, in order that taxpayers may know their rights under the amended Federal Estate Tax Law and enjoy national uniformity of the tax burden.

Respectfully submitted,

PAUL THOMAS KEY,
150 E. Broad St., Columbus 15, Ohio,
JUNIOR MELVIN ANDREWS,
36145 Vine St., Willoughby, Ohio,
Counsel for Petitioner.

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CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel of record for Ann B. Roseman Lloyd, petitioner, and that this petition for rehearing is filed pursuant to Rule 58 (2) of the Revised Rules of this Court.

I further certify that this petition for rehearing is presented in good faith and not for delay; that it is filed in view of the decision of the United States District Court for the Western District of South Carolina in the case of **Hamrick, Admrs., of the Estate of Lyman A. Hamrick, Dec'd v. Pitts, Director of Internal Revenue,** as more fully referred to in said petition.

I also certify that the petition filed herewith is restricted to a consideration of the intervening circumstance of the decision in said case and of its substantial effect with respect to this Court's allowance or denial of the petition for a writ of certiorari previously filed herein.

PAUL THOMAS KEY,
JUNIOR MELVIN ANDREWS,
Counsel for Petitioner.

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